

REMARKS

The art rejections remain respectfully traversed. The prior remarks are incorporated by reference and supplemented as follows.

Response to Response to Arguments

The following response particularly relates to the portion of the office action on pages 7 and 8 entitled "response to arguments."

Independent claims 20 and 33 recite, inter alia, transmitting second information units at a second power level which is greater than the first power level. Against this recitation, the Examiner is particularly pointing to Hulbert col. 3, line 56 to col. 4, line 18, claim 4, and Fig. 1. This portion of Hulbert states that transmission is inverted, after detection of an error. This section fails to teach or suggest that the power level of transmission is altered after detection of an error. Accordingly, these sections are not related to the claims.

Moreover, a difference of opinion has arisen between Applicant and the Examiner regarding whether error correction or power increases in Hulbert relate to future transmission (Applicant's position) or to re-transmission of the old data (the Examiner's position). Applicant would like to re-iterate that Hulbert never says that any data is transmitted again. In paragraph a of the "response to arguments" section, the Examiner holds the language "it is transmitting to compensate for the burst of errors." The Examiner believes that the "data it is transmitting" is the data that was just transmitted erroneously. Applicant respectfully disagrees. The data the transmitter is transmitting in a real time environment upon detection of the error is the NEXT data, not the OLD data. Therefore the NEXT data is what is inverted, not the previously

transmitted data. Accordingly, when Hulbert says "a means inverting the data if it is transmitting to compensate for a burst of errors" he means that if there is an ongoing transmission it is to be inverted. He does not mean that data is transmitted again.

From the perspective of the Examiner's position, the language of claim 4 is at best ambiguous. A mere ambiguity cannot give rise to a *prima facie* case of obviousness.

Moreover, Hulbert relates to the field of mobile phones. Error correction by automated re-transmission of old data has not been the standard solution in this field. Typically, the human recipient tells the human sender that a prior transmission was not understandable; and it has been up to the human sender to say whatever it was a second time, not up to the phone to do that.

Applicant accordingly respectfully submits that the Examiner's interpretation of the text is impermissible hindsight in view of Applicant's disclosure.

Applicant has previously pointed out that Hamabe is similarly deficient, and the Examiner has not refuted this. As far as Applicant can tell, any increase in power in Hamabe also relates to future transmissions, not to prior transmissions.

Accordingly Applicant respectfully submits that the Examiner has failed to make a *prima facie* case of obviousness against claims 20 and 33.

Claim 16??

The Examiner now also points to US 5,266,922, presumably with respect to claim 16. Applicant respectfully submits that this is improper. Either the claim is rejected over this additional patent or it is not. Moreover, Applicant has read this portion of the reference and sees that there is a "forward error correction" field relating to forward correction encoding. Applicant fails to understand what this might have to do with re-transmitting data at a higher power level,

subsequent to a type of feedback. Applicant finds no teaching or suggestion in portions pointed to by the Examiner that this information might relate to a previously transmitted packet, per claim 16.

Further arguments with respect to independent claims 5 and 12

Both of these claims recite that a first power level is selected to increase a probability of failed first transmission units and of consequent second information units transmission and to minimize average power consumption taking into account the first power level and the second power level. The first power level is the lowest level to correspond to a maximum allowable probability of failed first transmission units and consequent second information units.

Against this recitation, the Examiner cites Hamabe. Hamabe only teaches a gradual increase in the power level. The Examiner has pointed to no determinations or considerations of probability; and particularly there is no teaching or suggestion to determine average power taking into account first and second power levels, as recited. The Examiner states that the probability determinations are inherent. Applicants respectfully disagree. The levels pointed to by the Examiner appear only to be guesses, not based on probability determinations. Certainly, determinations of average power consumption in view of the many conditions, as recited in the claims, is not inherent.

The Examiner takes the specification at page 5, lines 23-25 as being some kind of admission of the content of the prior art. Applicant *vehemently*, through respectfully, *disagrees*. This section is describing THE INVENTION, not the prior art. The object of the invention section starts at the top of page 4 and the text thereafter relates to the INVENTION, NOT the prior art. Applicant has made no such admission as to the content of the prior art.

Therefore, the Examiner has not made a *prima facie* case of obviousness against claims 5 and 12.

The Examiner's other rejections and/or points of argument not addressed would appear to be moot in view of the foregoing. Nevertheless, Applicant reserves the right to respond to those rejections and arguments and to advance additional arguments in the appeal brief.

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

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Respectfully submitted,

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